***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 22787 of 2004

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% 24.01.2005

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Between:

Sri Poonamchand Gandhi Jain Dharmasala Kachiguda, Hyderabad, rep by its Manager Sri V. V. Gopala Raju

..... PETITIONER

AND

1 The Regional Joint Commissioner of Endowments, Multi Zone - III, Boggulakunta, Abids, Hyderabad.
2 The Deputy Commissioner of Endowments, Hyderabad.
3 Govind Maharj, S/o. Mothilal Vyas,
r/o.3-4-1035, Poonamchand Building, Opp : Kanchiguda Railway Station, Hyderabad.
4 Sri Ajay Kumar Jain, S/o. Sampath Raj,
r/o.3-4-1040, Poonamchand Building, Opp : Kanchiguda Railway Station, Hyderabad.

.....RESPONDENTS

! COUNSEL FOR THE PETITIOENR: MR.M.VIDYASAGAR

^ COUNSEL FOR RESPONDENTS 1&2:1.GP FOR ENDOWMENTS

COUNSEL FOR RESPONDENTS 3&4:Mr.B.Sudhakar Reddy

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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Railway Station, Hyderabad.

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r/o.3-4-1040, Poonamchand Building, Opp : Kanchiguda Railway Station,
Hyderabad.

.....RESPONDENT(S)

Petition filed under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction, more particularly a Writ in the nature of Writ of CERTIORARI calling for the records relating to the impugned proceedings issued by the Regional Joint Commissioner of Endowments, Multi Zone-III, Hyderabad in R.P.No. 179 of 2003, dated 08-6-2004 and the petitioner herein prays that the same may be quashed and pass such other order or orders.

Counsel for the Petitioner:MR.M.VIDYASAGAR

Counsel for the Respondent Nos.1&2: GP FOR ENDOWMENTS

Counsel for the Respondent Nos.3&4: Mr.B.Sudhakar Reddy

The Court made the following :

ORDER:

The petitioner is a religious endowment. One of the items of property held by it is, premises bearing No.3-4-1036, Poonamchand Building, Kachiguda, Hyderabad. One Ajay Kumar Jain, the 4th respondent was the lessee. The petitioner filed O.A.No.203 of 1998 before the 2nd respondent, for eviction of the 4th respondent. One of the contentions advanced on behalf of the petitioner was that the 4th respondent sublet the premises to the 3rd respondent without the permission of the petitioner. Through order dated 14-08-2003, the 2nd respondent allowed the O.A., and directed eviction of the 4th respondent under Section 83 of the A.P. Charitable and Hindu Religious Institutions Endowments Act (for short 'the Act'). The 4th

respondent did not prefer an appeal or revision against it, and the order became final against him.

When steps were being taken to resume the possession of the premises, on the basis of the order in O.A.No.203 of 1998, the 3rd respondent filed W.P.No.19368 of 2003 in this Court, alleging that he is sought to be dispossessed unauthorizedly. The writ petition was disposed of on 19-09-2003, leaving it open to the petitioner to pursue the statutory remedy, and directing maintenance of status quo for a period of three weeks.

The 4th respondent filed R.P.No.179 of 2003 before the Regional Joint Commissioner, Endowments, the 1st respondent, against the order passed by the 2nd respondent in O.A.No.203 of 1998. In his order dated 08-06-2004, the 1st respondent took the view that the 3rd respondent is a necessary party to O.A.No.203 of 1998, and on account of non-joinder of the necessary party, the order dated 14-08-2003 is vitiated. Accordingly, he set aside the order and remanded the matter to the 2nd respondent for fresh disposal after impleading the 3rd respondent. The same is challenged in this writ petition.

Sri M. Vidya Sagar, learned counsel for the petitioner submits that, undisputedly the 4th respondent alone was the tenant, and there was no obligation on the part of the petitioner to implead the 3rd respondent, who was inducted as a sub-lessee, contrary to law. He contends that the view taken by the 1st respondent amounts to putting a premium on the very illegality committed by the 4th respondent.

Learned counsel for the 3rd respondent submits that his client was inducted into possession of the premises by the 4th respondent, and the question as to whether grant of sub-lease in his favour is vitiated or is opposed to law, could have been decided only after impleading him in the O.A. He contends that no prejudice can be said to have been suffered by the petitioner, on account of the order of remand passed by the 1st respondent. Learned Government Pleader for Endowments has made submissions broadly on the same lines.

The petitioner is the owner of the premises referred to above. The 4th respondent was granted lease in respect of the same. Petitioner filed O.A.No.203 of

1998, under Section 83 of the Act. It was supported by a report of the Assistant Commissioner of Endowments, Twin Cities, Hyderabad. One of the important grounds raised by the petitioner was that the 4th respondent sublet the premises in favour of the 3rd respondent, without any intimation and permission. Another allegation was that the 4th respondent committed default in payment of rents. The 2nd respondent discussed the matter at length, with reference to these contentions and ultimately held that the 4th respondent herein is an encroacher. He was directed to handover the vacant possession of the premises within fifteen days from the date of receipt of the order. The 4th respondent did not choose to assail the order in O.A.No.203 of 1998. It is the 3rd respondent, who opposed these steps, initially, by filing a writ petition in the High Court and thereafter by filing R.P.No.179 of 2003. The 1st respondent set aside the order in O.A.No.203 of 1998 on the sole ground that O.A.No.203 of 1998 suffers from infirmity of non-joinder of necessary party, namely, the 3rd respondent.

Grant of leases, in respect of premises belonging to religious institutions and endowments in the State of Andhra Pradesh, is governed by the provisions of the Act. A lease, in respect of an immovable property, is required to be granted only after following the procedure prescribed therein. It is impermissible for any institution to grant leases exceeding a period of one year, without the approval of the Commissioner. The definition of 'encroacher' under Section 83 of the Act is so wide, as to take in its fold, even a lessee, who continues in the premises after the expiry of the lease or the one who violates the conditions of the lease. The petitioner sought for eviction of the 4th respondent mainly on the ground that he sublet the premises. In such proceedings, it is only the lessee, who is required to be impleaded. When the allegation is about sub-leasing the premises, insistence on impleading the sub-lessee would, in a way, amount to acknowledging the very illegality.

The Act does not confer any right, legal or otherwise, on a sub-lessee. When the act of sub-leasing itself constitutes a ground for eviction, insistence on impleading the sub-lessee amounts to indirect acknowledgment of right in favour of a sub-lessee, and thereby the very illegality, which constituted the basis for eviction. The 1st respondent did not cite any provision of law or decided case in support of his view, that the sub-lessee of premises belonging to a religious institution is a proper

and necessary party to the proceedings under Section 83 of the Act. The 3rd respondent did not claim any privity of contract or any other kind of relationship with the petitioner. He did not dispute that the petitioner is the owner of the property. In that view of the matter, the ground, on the basis of which the 1st respondent set aside the order in O.A.No.203 of 1998, cannot be sustained.

Hence, the order in R.P.No.179 of 2003, dated 08-06-2004, passed by the 1st respondent is set aside, and it shall be open to the petitioner to enforce the order passed by the 2nd respondent in O.A.No.203 of 1998.

The writ petition is accordingly allowed. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.24-01-2005

Note:

L.R copy to be marked.

(B/O)

KO

One fair copy to the Hon'ble Mr.Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

To

1 The Regional Joint Commissioner of Endowments, Multi Zone - III, Boggulakunta, Abids, Hyderabad.

2. The Deputy Commissioner of Endowments, Hyderabad.

3.2 CCs to G.P. for Endowments, High Court of A.P., High Court Buildings, Hyderabad (OUT).

4.2CD copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice &

Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library,

High Court buildings, Hyderabad.

7. 8 L.R.Copies.